

GAO

Report to the Honorable  
John R. Kasich, House of  
Representatives

July 1991

# SEVERANCE PAY

## DOD Not Exempt From Paying Benefits to Greek Employees



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**National Security and  
International Affairs Division**

B-242761

July 22, 1991

**The Honorable John R. Kasich  
House of Representatives**

Dear Mr. Kasich:

This is an unclassified version of a classified report on severance payments for Greek nationals employed by the Department of Defense (DOD). In response to your request of September 25, 1990, we analyzed whether section 311 of the National Defense Authorization Act of Fiscal Years 1990 and 1991 (P.L. 101-189) applies to the closure of two bases in Greece—Nea Makri Naval Communications Station and Hellenikon Air Base—and determined the amount of severance and incentive pay for employees at both locations. As requested, we also analyzed the difficulties in implementing section 311 and are proposing some ways for addressing these problems.

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**Background**

In many nations, when employees are released from service through no fault of their own, the employer legally owes them severance pay. In Greece, as in many countries, these payments are based on the (1) type of employee (“blue collar” or “white collar”), (2) number of months of service, and (3) pay at the time of separation.

In addition to severance pay, Greek employees who have been released because of a reduction in force are entitled to retention incentive pay. Incentive pay is equal to one-half month’s pay for each full year of service beginning with the sixth year of service. There is no limit on the amount of incentive pay an employee can collect.

Three pertinent agreements govern basing rights and severance pay in Greece: the NATO Status of Forces Agreement (SOFA), the bilateral Mutual Defense Cooperation Agreement, and the 1960 labor agreement. Under the NATO SOFA, wages, supplementary payments, and conditions for the protection of workers are to be based on the laws of the receiving country. The Mutual Defense Cooperation Agreement, in referring to the SOFA, states that the United States will apply to its local national employees the standards contained in Greek labor law as they apply to private sector employees. Greek law provides for severance payments.

The labor agreement designates the Hellenic Air Force the legal employer of all Greek personnel hired for the U.S. forces. The U.S.

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forces reimburse the Greek government for salaries, allowances, and premiums, including severance pay. The Hellenic Air Force and the U.S. forces, by mutual agreement, establish the regulations on employment conditions, such as severance and incentive pay.

Section 311 prohibits DOD from making severance payments if termination of employment results from the host government's request to close, or curtail activities at, a U.S. base. However, it does not prohibit severance payments if a base closes or activities are curtailed under an agreement concluded with a foreign country before November 29, 1989—the effective date of the act containing section 311. Where it has been determined that section 311 applies, DOD is also prohibited from reimbursing contractors for severance pay, regardless of the date of a contract.

Section 311 also states that the sense of the Congress is that (1) when a base closure or curtailment is at a foreign government's request, the host government should make the severance payments, and (2) the President should attempt to include in future agreements with any country a provision that would require the host government to make these payments under such circumstances.

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## Results in Brief

Both DOD and the State Department take the view that section 311 does not apply to Hellenikon and Nea Makri because the United States decided to close these bases. The historical record suggests that the Nea Makri closure was a U.S. decision. Although the record indicates that the Greek government repeatedly told the United States it would have to leave Hellenikon, the 1990 Mutual Defense Cooperation Agreement states that the United States decided to close the base.

We also concluded that section 311 does not apply to the Greek base closures, but our rationale is different from that of DOD and State. If the 1990 agreement was the only agreement involved, we would be inclined to support the DOD and State Department position. However, in our view, the closures resulted from termination of the 1983 agreement. This agreement was entered into before section 311 became effective. As such, the agreement is exempt from section 311's severance payment restrictions. Thus, section 311 does not prohibit the United States from making severance payments to Greek nationals whose employment ends as a result of the Hellenikon and Nea Makri closures.

Severance and incentive payments will total approximately \$7.2 million for local nationals employed at the two bases. Further, we identified

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serious problems with the law that the Congress could address by eliminating the section. Alternatively, if the Congress wanted to effectively restrict severance pay, it could prohibit DOD from using appropriations for severance pay at specific bases.

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## The Greek Government Asked the United States to Leave Hellenikon

The historical record indicates that the Greek government repeatedly told the United States it would have to leave Hellenikon, and that the Nea Makri closure was a U.S. decision.<sup>1</sup> The following summarizes the events surrounding the Hellenikon and Nea Makri closures.

In 1983, the United States and Greece concluded a 5-year agreement authorizing the United States to use four major installations: Hellenikon, Nea Makri, Iraklion, and Souda Bay. Upon written notice, either party could terminate the agreement 5 years after the effective date, that is, December 1988. The United States would be allowed 17 months from the date of termination to carry out the withdrawal of U.S. personnel, property, and equipment from Greece.

In November 1987, the U.S. and Greek governments began negotiating a new agreement. While the Greek government sought to reduce the U.S. presence, the U.S. government wanted a long-term agreement that would continue operations at the four bases.

In April 1988, the Greek government informed the United States during negotiations that it had decided to close Hellenikon. Three months later, the Greek government formally announced it would terminate the basing agreement when it expired. As a result, the United States would have had until May 1990—17 months from the date of termination—to leave all sites in Greece. Between the time of the Greek announcement and the signing of a new agreement, the negotiations stopped and started twice. In January 1990, during an extended hiatus in the negotiations, Secretary Cheney announced the closure of Hellenikon and Nea Makri, along with other overseas bases. Also during this hiatus, the Greek government enacted legislation allowing the United States to extend the withdrawal period until November 1990.

In July 1990, the United States and Greece signed a new agreement calling for continued key operations at Iraklion and Souda Bay and

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<sup>1</sup>The details of the negotiations are classified.

withdrawal from Nea Makri by September 30, 1990, and from Hellenikon by June 30, 1991. The agreement stated that the Hellenikon closure was a U.S. decision. Under the new agreement, the United States is transferring some Hellenikon operations within Greece and others outside of Greece.

### **The Administration Determined That Section 311 Does Not Apply to the Base Closures in Greece**

Both the Defense and State Departments take the view that section 311 does not apply to Hellenikon and Nea Makri because the United States decided to close these bases. According to the Office of the Secretary of Defense, although the Greek government gave notice of termination of the 1983 agreement, "they proposed to open negotiations on a new agreement so such notice did not result in the closure of facilities. Therefore, the notification by the Secretary of Defense that Nea Makri and Hellenikon would be closed is considered to be a unilateral voluntary action by the United States and thus not subject" to section 311. In drawing their conclusions, neither DOD nor State prepared any written legal opinions.

### **GAO Finds That Section 311 Does Not Apply**

We also concluded that section 311 does not apply to the Greek base closures because, in our view, the closures resulted from termination of the 1983 agreement. Section 311 does not prohibit severance payments if a base closes under an agreement concluded before section 311 was enacted.

If the 1990 agreement was the only agreement bearing on this issue, we would be inclined to support the DOD and State position. In our view, however, the closures resulted from termination of the 1983 agreement, which was entered into before section 311 became effective. The 1983 agreement provided for termination by either party of the U.S. right to occupy bases in Greece and allowed the United States 17 months from termination to withdraw its forces from Greece. After the Greek government terminated the agreement in December 1988, the United States was obligated to withdraw within the specified period. The 1990 agreement merely facilitated the base closures, which resulted from termination of the 1983 agreement.

In any event, either approach leads to the same result—section 311 does not preclude reimbursement of severance payments for Greek nationals whose employment ends as a result of the closure of either Hellenikon or Nea Makri.

## Severance Payments Total About \$7.2 Million

According to U.S. military officials, the United States will owe a total of about \$7.2 million in severance and incentive pay for local national employees released from Nea Makri and Hellenikon as a result of the base closures. Tables 1 and 2 show the payments by base.

**Table 1: Severance and Incentive Pay for Greek Employees at Nea Makri**

Employer	Number of Greek employees	Severance and incentive pay	Average pay
DOD	98	\$858,000	\$8,755

Note: Since the United States turned Nea Makri over to the Greek government on August 17, 1990, the United States has already made the severance and incentive payments. However, due to a retroactive pay raise, the former Nea Makri employees may receive additional payments.

**Table 2: Severance and Incentive Pay for Greek Employees at Hellenikon**

Employer	Number of Greek employees	Severance and incentive pay	Average pay
DOD	241	\$4,925,300	\$20,437
Contractor <sup>a</sup>	694	\$1,403,500	\$2,022
<b>Total</b>	<b>935</b>	<b>\$6,328,800</b>	

Note: Estimates are as of April 1991.

<sup>a</sup>Estimate for the base maintenance contractor. Generally, the United States reimburses contractors for these costs.

## Problems May Arise in Implementing Section 311

We identified four problems that may arise in implementing section 311. First, in cases where the pertinent agreement is dated after section 311 became effective, the issue would be whether the United States closed a base at the request of the host government or for other reasons. This might be difficult to determine, since the United States may portray a closure as a U.S. decision even though the historical record suggests that we were forced out. For example, in the case of Hellenikon, the record indicates that the Greek government initiated and pursued the closure. Yet the 1990 agreement states that the closure was a U.S. decision. It would be difficult to apply section 311 in the face of an international agreement stating the United States decided to close a base.

Second, the United States and its contractors may encounter legal difficulties if they do not make severance payments. Generally, under host government laws, contractors are required to make severance payments to foreign nationals. The United States then reimburses the contractor. Where section 311 applies, DOD is prohibited from reimbursing contractors for severance payments, regardless of the date of the contract. If a contractor refuses to make severance payments to its local national

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employees, the employees or their unions may succeed in a suit against the contractor in foreign courts. Further, if the contract does not specifically grant the United States relief from severance payments when the host government requests a base closure, the contractor may sue the U.S. government for reimbursement.

Third, if the United States does not make severance payments where it is obligated under international agreement to do so, it will be violating the agreement and possibly provoking the host government to take action against the United States. For example, the host government could decide to no longer honor other provisions of the agreement, harming U.S. political and strategic interests.

Fourth, since there is no guarantee that host governments will make the severance payments if the United States does not meet this obligation, the United States may be faced with lawsuits and labor unrest. If local national employees do not receive their severance payments, they or their unions may sue the United States in foreign courts. It is doubtful that a foreign court would affirm section 311 when faced with citizens who are challenging the U.S. government under international agreements obligating the United States to make severance payments. Further, severe labor problems may ensue. This is particularly true in countries such as Greece where there is a history of labor strikes, sometimes leading to violence, and the United States intends to continue operations in other parts of the country.

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## Matters for Congressional Consideration

In view of international agreements in several countries obligating the United States to make severance payments and the possibility of lawsuits and labor unrest, the Congress may wish to consider eliminating section 311. Alternatively, if the Congress wanted to effectively restrict severance pay, it could prohibit DOD from using any appropriations for severance pay at specific bases, such as Hellenikon. In the future, to determine whether severance payments are warranted, the Congress could require advance notification of DOD's planned action and conduct its own inquiry, or require an executive branch report, on the circumstances of particular base closures.

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## Scope and Methodology

We interviewed officials at the Departments of Defense and State and analyzed message cables, reports, and other documents. From U.S. military officials in Greece and at the U.S. Air Force in Europe, we obtained figures on the actual severance and incentive payments for local

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nationals formerly employed at Nea Makri and estimates of similar data for employees at Hellenikon Air Base. We conducted our review between October 1990 and April 1991 in accordance with generally accepted government auditing standards. We did not obtain written agency comments on this report. However, we discussed our findings with agency officials and have included their comments where appropriate.

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As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of this letter. We are sending copies of this report to the Secretaries of Defense and State. Upon request, copies will be made available to other interested parties.

This report was prepared under the direction of Joseph E. Kelley, Director, Security and International Relations Issues, who may be reached on (202) 275-4128 if you or your staff have further questions. Other major contributors are listed in appendix I.

Sincerely yours,



Frank C. Conahan  
Assistant Comptroller General

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